INDEX TO GENERAL TERMS AND CONDITIONS ISSUES

Page

VII. GENERAL TERMS AND CONDITIONS

With one exception (Issue I-11), the sixteen General Terms and Conditions issues that remain are unique to WorldCom. With AT&T and Cox, Verizon has successfully negotiated mutually acceptable provisions dealing with each of these issues. WorldCom, on the other hand, attempts with many of these issues to shift to Verizon VA the day-to-day risk and cost of doing business in a competitive local marketplace. WorldCom does so by seeking guarantees from Verizon VA that WorldCom will receive perfect service from Verizon VA. In each case, WorldCom's position reflects an unrealistic and inequitable approach to local interconnection that is not envisioned by the Act. As such, the Commission should reject WorldCom's positions.

ISSUE I-11: OSS Access

AT&T: May Verizon summarily terminate AT&T's access to OSS for AT&T's alleged failure to cure its breach of obligations concerning access to OSS per Schedule 11.6?

WorldCom: May Verizon summarily and unilaterally terminate WorldCom's access to the OSS unbundled network element?

A. OVERVIEW

Verizon VA addressed this issue in conjunction with Issues I-8 and IV-97, in the Business Process section of this brief.

ISSUE III-15: Intellectual Property

WorldCom: Should the Interconnection Agreement contain a provision under which Verizon agrees to use its best efforts to negotiate rights for MCIm to use Verizon's network under the same licensing terms that Verizon receives from its vendors? Should that provision require Verizon to indemnify WorldCom against third party intellectual property claims arising out of WorldCom's use of Verizon's network, in the event that Verizon fails to use its best efforts to negotiate such rights for MCIm? Should that provision also require Verizon to warrant that it will seek to ensure in its licensing agreements with third parties that WorldCom may use or interconnect with Verizon's network equipment or software? Should the provision contain additional clauses relating to Verizon's obligation to provide notice of third party intellectual property claims, Verizon's obligation to avoid such claims where possible, and WorldCom's reservation of rights to pursue certain remedies against Verizon?

A. OVERVIEW

Verizon VA has reached agreement on contract language that settles this issue with AT&T. See Verizon proposed AT&T contract § 28.16.4. This language memorializes Verizon VA's obligation to use its best efforts to negotiate with third parties, on behalf of AT&T, the right to use intellectual property embedded in the Verizon VA network. This language tracks applicable law. WorldCom, however, continues to insist on indemnification language that turns the "best efforts" standard into a strict liability standard. WorldCom's position should be rejected by the Commission.

B. DISCUSSION

The *UNE Licensing Order* outlines the four components of Verizon VA's obligation to provide CLECs access to UNEs and the intellectual property necessary to their use. The contract language Verizon VA agreed to with AT&T and proposed to WorldCom is consistent with these requirements. That language requires Verizon to (a) make UNEs available (§ 28.16.4); (b) provide notification of any restrictions in third party licensing agreements that affect the CLEC's use of the UNEs (§ 28.16.4(a)); (c) use best efforts to procure rights or licenses that allow the

CLEC co-extensive usage of UNEs (§ 28.16.4(b)); and (d) recover costs from the CLEC to the extent permitted under applicable law (§ 28.16.4(b)).

WorldCom's interpretation of the *UNE Licensing Order* and *AT&T Communications of Virginia, Inc. v. Bell Atlantic-Virginia, Inc.*, 197 F.3d 663 (4th Cir. 1999) replaces the "best efforts" standard with a commercially unreasonable strict liability standard by illegitimately injecting warranty and indemnification obligations not required by either order. *See* WorldCom proposed contract §§ 20.2 to 20.2.1.2. The Fourth Circuit and the Commission require only that Verizon VA use best efforts to negotiate for CLECs nondiscriminatory access to intellectual property rights. Neither order requires Verizon VA to guarantee the provision of intellectual property, nor do they compel Verizon VA to indemnify WorldCom for what may be impermissible use of third party intellectual property.

Applicable law, complemented by the dispute resolution provisions of the interconnection agreement, provide WorldCom with adequate remedial protection, if Verizon VA fails to use "best efforts" to negotiate intellectual property rights. The WorldCom proposal goes well beyond that, essentially guaranteeing the availability of intellectual property rights to WorldCom. Under WorldCom's proposal, either WorldCom would receive the intellectual property rights it seeks or Verizon VA would be required to pay WorldCom for being unable to negotiate those rights.

The New York PSC recently rejected an identical proposal made by AT&T. In that case, AT&T argued that it needed warranty and indemnification provisions to enforce the "best efforts" standard regarding access to third party intellectual property. *New York (AT&T/Verizon NY) Arbitration Order* at 22. The New York PSC rejected AT&T's language, explaining that it "would, in effect, have Verizon guarantee the performance of third party vendors to AT&T,

which is unnecessary." *Id.* at 23. Instead, the New York PSC ordered that "in any instance where Verizon is unsuccessful in negotiating co-extensive terms for AT&T, Verizon should immediately and explicitly notify AT&T of any such results." *Id.* As the New York PSC explained, that notice, along with the general enforcement provisions of the agreement, gave AT&T "sufficient remedies to redress any failure by Verizon to fulfill its obligations." *Id.*[1]

WorldCom's attempt to turn the "best efforts" standard into a strict liability standard is neither commercially reasonable nor consistent with applicable law. The language agreed to between AT&T and Verizon VA, however, tracks applicable law in a manner that is commercially reasonable. Because WorldCom has offered no viable reason why it cannot agree to that language, the Commission should reject the WorldCom proposal and adopt the Verizon VA proposal.

C. VERIZON VA'S CONTRACT PROPOSALS

Verizon VA has proposed that WorldCom accept the same language that Verizon VA has agreed to with AT&T. *See* Verizon proposed AT&T contract, § 28.16.4; *see also* General Terms and Conditions JDPL at p. 20.

1 This notice is provided for in § 28.16.4(b) of the language agreed to by Verizon VA and AT&T.

ISSUE IV-45: Fraud Prevention

WorldCom: Should the interconnection agreement contain a fraud prevention provision that: (1) requires each Party to make available to the other fraud prevention features that may be embedded within any of the Network Elements; (2) makes clear that uncollectible or unbillable revenues from fraud and resulting from, but not confined to provisioning, maintenance, or signal network routing errors shall be the responsibility of the Party causing the error; and (3) states that neither Party is liable to the other for any fraud incurred in connection with service offerings, but that each Party must indemnify and hold each other harmless for any losses payable to IXC carriers caused by "clip-on" fraud incurred as a result of unauthorized access to an indemnifying Party's Service Area Concept (provided that the indemnifying Party shall control all negotiations and settlements of such claims with the applicable IXC carriers)?

A. OVERVIEW

The Act provides that CLECs may, through interconnection and resale, avail themselves of the benefits of the Verizon VA network in order to enter the competitive marketplace. Nowhere does the Act, or any subsequent interpretation of the Act, provide that a CLEC is entitled to enter the marketplace insulated from all of the attendant risks of conducting business.

In the fraud prevention context, Verizon VA shoulders the loss for any fraud perpetrated against it or its end-users, thereby assuming the fraud-related business risks associated with providing local exchange service. In an effort to shield itself from similar fraud-related losses, WorldCom suggests a shifting of the risk of conducting business in a way neither anticipated nor required by the Act.

If WorldCom wants to compete in the local exchange service marketplace then, just like Verizon VA, it must bear the day-to-day risks that come with the business. This includes clip-on fraud perpetrated by or against its customers. Verizon VA's proposed language appropriately and equitably assigns that risk.

B. DISCUSSION

"Clip-on fraud" refers to an unauthorized physical attachment to the local network that allows a person to use services at the expense of another party. Tr. 1925. Typically clip-on fraud occurs at the Network Interface Device ("NID"), sack box, or other demarcation point. Tr. 1926. Most often, it occurs in secluded, unseen locations, such as basement telephone closets in urban buildings. As such, it is only by sheer luck that a carrier will catch a clip-on fraud perpetrator in the act.

Carriers generally become aware of clip-on fraud by virtue of a complaint by an end-user customer for a bill that includes services that he or she did not use. An investigation ensues, often resulting in improved locking devices at the location involved in an effort to prevent a recurrence of the fraud. Verizon VA has proposed, and WorldCom has agreed to, contract language that memorializes the Parties' commitment to work together to minimize various types of fraud. Verizon VA proposed WorldCom contract §§ 17.1 and 17.2. Pursuant to this language, Verizon VA will make available to WorldCom the "fraud prevention features, including prevention, detection, or control functionality" embedded in the Verizon network. *Id.* at 17.2; Tr. 1932.

Thus, the dispute here involves not cooperative efforts but WorldCom's proposal that the interconnection agreement include a clause that requires each Party to indemnify the other for any clip-on fraud that occurs on the indemnifying Party's facilities. WorldCom proposed contract § 3.3. That is, wherever Verizon VA leases facilities to WorldCom, Verizon VA would assume the risk of fraud perpetrated against WorldCom or its end users. Ignoring the nature of the crime, WorldCom asserts that the lessor of the facilities is in a better position to prevent clip-on fraud than the lessee of those facilities. Based upon this premise, WorldCom asks that

Verizon VA provide it with what is essentially complimentary insurance against the criminal acts of third parties.

WorldCom's proposal is flawed for a number of reasons. First, requiring Verizon VA to insure against loss due to fraud greatly exceeds the Commission's requirement that Verizon VA implement reasonable security procedures. *See Advanced Services Order II* at ¶ ¶ 46-48; *Local Competition Order* at ¶ 598. Second, the proposal ignores the practicalities of the situation. Verizon VA, as the provider of services using the subject facilities, is in no better a position to prevent clip-on fraud than WorldCom, the purchaser of the services using these facilities. This crime, which by Verizon's records has occurred only twice in Virginia since 1999, is perpetrated in basement closets and other out-of-the-way places. Tr. 1931. Unless Verizon VA were to hire hundreds of employees to patrol its thousands of miles of network, it would be only by sheer luck that it would catch someone in the act of clip-on fraud.[2] Finally, the Act entitles WorldCom to enter the local marketplace on a level playing field, not in a protective bubble. Like Verizon VA and any other local exchange carrier, WorldCom must accept the day-to-day risks of doing business. It is not, as it suggests in this issue, entitled to free insurance against criminal acts.

The proper formula for assessing clip-on fraud loss is that set forth in Verizon's proposed General Terms and Conditions § 17: "CLEC assumes responsibility for all fraud associated with its Customers and accounts." As Verizon VA has in the past, and as is clearly stated in § 17 of Verizon VA's proposed contract, Verizon VA will continue to cooperate with any CLEC to minimize fraud. This commitment is all that is required by applicable law and is all that need be

[2] WorldCom, of course, does not suggest that it would be willing to absorb the cost associated with such roving patrols.

included in the agreement between the Parties. Accordingly, the Commission should adopt Verizon VA's proposed contract language on this issue.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, General Terms and Conditions § 17, 26.1, and related definitions.

ISSUE IV- 84: Scope of Agreement and Alteration of Network

WorldCom: Should the Interconnection Agreement contain a provision: (1) obligating Verizon to provide services in any Technically Feasible combination requested by WorldCom (excepting Local Resale); (2) prohibiting either party from discontinuing or refusing to provide any service provided or required under the Interconnection Agreement (except in accordance with the terms of the Interconnection Agreement), without the other party's written agreement; and (3) prohibiting Verizon from altering its network without notice in a manner (i) inconsistent with the Commission's notice requirements and (ii) that would impair WorldCom's rights under the Interconnection Agreement?

A. OVERVIEW

The issue arises from WorldCom's proposed Part A, § 1.2, which has three subparts. Verizon VA explains its opposition to that language below. To the extent, however, that WorldCom's proposal would require Verizon VA to provide resold advanced services over UNE-P lines, that issue has been addressed in the Resale section of Verizon VA's brief, under Issue V-9.

B. DISCUSSION

The first sentence of WorldCom's proposed Part A, § 1.2 would obligate Verizon VA to provide services in any technically feasible combination requested by WorldCom (excepting Local Resale). The Parties' UNE attachment is the appropriate place to address the issue of combinations. Verizon VA will comply with applicable law. Verizon VA cannot, however, be forced to obligate itself, through the interconnection agreement, beyond the requirements of applicable law as that law may change over time. Accordingly, the first sentence of WorldCom's proposed Part A, § 1.2 should be rejected for inclusion in this part of the General Terms and Conditions section of the Parties' agreement. *See also* Verizon VA's Resale Brief (Issue V-9).

The second sentence of WorldCom's Part A, § 1.2 would prohibit the Parties from discontinuing or refusing to provide any service provided or required under the interconnection agreement (except in accordance with the terms of the interconnection agreement), without the other party's written agreement. This issue is addressed in the Parties' change of law language (Issue IV-113). Accordingly, the second sentence of WorldCom's proposed Part A, § 1.2 should be rejected for inclusion in this part of the General Terms and Conditions section of the agreement.

The third sentence of WorldCom's Part A, § 1.2 would prohibit Verizon VA from altering its network without notice in a manner (i) inconsistent with the Commission's notice requirements and (ii) that would impair WorldCom's rights under the interconnection agreement. Verizon VA must be permitted to change its network in accordance with applicable law. Verizon VA proposes contract language that addresses this in § 42 of its proposed interconnection agreement with WorldCom, which was the subject of Issue VI-1(T), an issue settled between the Parties. Accordingly, the third sentence of WorldCom's proposed Part A, § 1.2 should be rejected.

C. VERIZON VA'S CONTRACT PROPOSALS

Verizon VA opposes inclusion of the WorldCom proposed contract language addressing this issue.

ISSUE IV-91: OS/DA Branding

WorldCom: Should the Interconnection Agreement contain detailed provisions setting forth how branding will occur?

A. OVERVIEW

Verizon VA believes that this issue is settled. Based on the contract language proposed, Verizon VA originally objected WorldCom's position on this issue. WorldCom's proposed § 7.1 sought to impose upon Verizon VA an obligation to "brand any and all services. . .as MCIm may determine." WorldCom's direct testimony on this issue, however, suggested that WorldCom had a more narrow objective. Specifically, Ms. Lichtenberg stated that WorldCom wanted "language that makes it clear that branding will be provided both when operator services and directory assistance ("OS/DA") are provided through resale and when they are provided as part of the UNE-Platform." WorldCom Exh. 18 at 21.

In an effort to settle this issue, Verizon VA agreed to allow WorldCom to purchase rebranded or unbranded directory assistance and operator services from Verizon VA for WorldCom customers served by UNE P facilities. Verizon Exh. 30 at 9-10; Tr. 2128. Verizon VA has offered to WorldCom the following contract language to capture this agreement:

> To the extent required by Applicable Law, upon request by **CLEC and at prices, terms and conditions to be negotiated by **CLEC and Verizon, Verizon shall provide Verizon Resold OS/DA Services ***and OS/DA delivered through UNE-P*** that are identified by **CLEC's trade name, or that are not identified by trade name, trademark, or service mark.

Verizon proposed WorldCom contract § 32.1 (emphasis added to highlight modifications).

Under Verizon VA's proposal, WorldCom would be responsible for arranging for the transport of its customers' calls to Verizon VA, and WorldCom could specify its own branding, or no branding at all, for these services. Thus, Verizon VA would provide to WorldCom directory assistance and operator services, including any associated branding, pursuant to the

same nondiscriminatory terms and conditions that apply to other CLECs purchasing these services from Verizon VA.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, General Terms and Conditions § 32.1, and related definitions.

ISSUE IV-95: Responsibility for Costs and Expenses

WorldCom: Should the Interconnection Agreement contain a provision making each Party (subject to certain exceptions) responsible for all costs and expenses incurred in complying with its obligations under the Interconnection Agreement, and requiring each Party to undertake the technological measures necessary for such compliance?

A. OVERVIEW

WorldCom's proposed Part A, § 8.2 is not only unnecessary but, because of its ambiguity, could lead to needless disputes over its interpretation. Nonetheless, Verizon VA has offered to include it in the interconnection agreement, if modified to include the phrase "or otherwise provided for under Applicable Law" after the introductory clause "Except as otherwise specified in this Agreement."

B. DISCUSSION

If WorldCom's proposed Part A, § 8.2 were consistent with applicable law and the pricing provisions of the contract, it would be redundant and unnecessary. WorldCom's proposed Part A, § 8.2, however, is consistent with neither applicable law nor pricing provisions in the Parties' agreement. Therefore, it should not be included. The addition of the phrase proposed by Verizon VA ("or otherwise provided for under Applicable Law") would eliminate this conflict and clarify that Verizon VA has a right to be compensated for the costs associated with providing services to WorldCom.

Verizon VA is concerned that WorldCom (or another carrier opting into WorldCom's agreement) would argue that the subject language proposed by WorldCom would estop Verizon VA from receiving compensation to make it whole for providing services to WorldCom, even if the Commission were to determine that compensation was due. For example, if CLECs desired a particular costly modification to Verizon VA's OSS systems, under WorldCom's proposed

language on this issue (*i.e.*, WorldCom's proposed contract Part A, § 8.2), WorldCom might argue that Verizon VA bears total responsibility for this cost – even if the Commission issued an order setting forth how the costs for the modification should be allocated. This is where Verizon VA's suggested addition provides the necessary clarification. Through this additional language, Verizon VA has confidence that Commission orders (and other applicable law) will be given the appropriate effect.

Verizon VA would prefer that the Commission exclude WorldCom's proposed Part A, § 8.2 from the agreement. If the Commission chooses to include Part A, § 8.2 in the agreement, it should add the Verizon VA proposed language.

C. VERIZON VA'S CONTRACT PROPOSALS

Verizon VA has proposed modifications to the WorldCom proposed contract terms, as discussed above.

ISSUE IV-101: Binding Arbitration

WorldCom: Should the parties be allowed to submit disputes under the agreement to binding arbitration under the United States Arbitration Act?

A. OVERVIEW

This is another issue that Verizon VA and AT&T have resolved, settling upon language that allows the Parties to resolve, through binding arbitration, certain disputes arising under the interconnection agreement. In an effort to resolve this issue through compromise, Verizon VA proposed such language (*i.e.*, AT&T contract § 28.11.3) to WorldCom. WorldCom responded by requesting a dozen or so changes to the language accepted by AT&T. Verizon VA agreed with all but two of these changes, finding those two to be patently unreasonable.

The first change with which Verizon VA cannot agree deals with WorldCom's desire to have the arbitrator's order become effective before being approved, or deemed approved, by this Commission. The second change relates to WorldCom's desire to reserve the right to raise a dispute, subject to binding arbitration under the interconnection agreement, in the ADR process set forth in the Merger Order. AT&T agreed to waive this option, given the fact that the Parties had agreed to binding arbitration as the sole remedy for certain contract disputes.

As noted above, Verizon VA has been more than reasonable with WorldCom in trying to resolve this issue. If WorldCom is not willing to accept the language agreed to with AT&T (together with the dozen or so WorldCom modifications to which Verizon VA would agree), then Verizon VA will assert its right, as a matter of law, not to participate in alternative dispute resolution at all. Rather, Verizon VA will maintain its right to exercise all legal and equitable remedies available to it.

B. DISCUSSION

WorldCom's objection to the arbitration clause agreed to by AT&T is twofold. First, WorldCom wants any arbitration order to become effective upon issuance, despite agreeing that the Parties should retain the right to challenge an arbitrator's ruling before this Commission. Second, WorldCom refuses to waive its right to submit disputes covered by this agreement's arbitration clause to the ADR process established by the Merger Order. Verizon VA cannot agree to either point.

Making an arbitration award enforceable upon issuance runs contrary to the notion that this Commission retains the authority to review such awards for consistency with applicable law, public policy and the like. It could lead to a situation where a party is forced to implement some change in practice pursuant to an arbitration award, only to have to try to undo that change when the Commission sets the arbitration award aside or otherwise modifies the award. Waiting a maximum of 60 days for Commission approval or rejection is far more efficient and commercially reasonable.[3] Accordingly, the Parties should not have to risk having to "unscramble the egg" to undo such a change, which, in some cases, may be difficult at best. In fact, Verizon VA would not have agreed to a binding arbitration clause with AT&T if the arbitration award were not subject to Commission review prior to effectiveness. *See NY (Verizon NY/AT&T) Arbitration Order* at 11 (arbitration award not enforceable until NY PSC review period passes).

Similarly, WorldCom offers no justification for not waiving its right to pursue disputes under the Merger Order's ADR provisions, when those disputes are covered by the

[3] § 28.11.7 gives the Parties 30 days to submit the arbitrator's decision to the Commission for review, and gives the Commission 30 days in which to reject or modify the order or, passively, affirm it.

interconnection agreement's arbitration clause. If WorldCom wants a binding arbitration clause in this agreement, then it should be held to that choice. It should not be allowed to "forum shop" based on the nature of the dispute. *See NY (Verizon NY/AT&T) Arbitration Order* at 11 (dispute resolution process provides exclusive remedy for contract violation).

If WorldCom will not agree to the language agreed to between Verizon VA and AT&T (as modified to include Verizon VA's agreement to nearly all of WorldCom's suggested changes), then Verizon VA asserts its right, as a matter of law, not to arbitrate contract disputes. Arbitration of disputes under the interconnection agreement is a matter of contract, not statute. Therefore, no party can be required to arbitrate any dispute that it has not agreed to submit to arbitration. *WORLDCOM Technologies, Inc. v. Communications Workers of Am.*, 475 U.S. 643, 648 (1986); *see also Marrowbone Development Company v. District 17, United Mine Workers of Am.*, 147 F.3d 296, 300 (4th Cir. 1998) ("the obligation to arbitrate is a creature of contract and . . . a party cannot be required to submit to arbitration unless he has agreed to do so in a contract"); *Hendrick v. Brown & Root, Inv.* , 50 F. Supp. 2d 527, 532 (E.D.Va. 1999) ("the legal predicate of compulsory arbitration is contractual consent"); *Waterfront Marine Construction, Inc., v. North End 49ers Scndbridge Bulkhear Groups A, B, and C,* 251 Va. 417, 427, 46 S.E.2d 894, 899 (1996) ("in the absence of a clear agreement, parties should not be forced to submit matters to arbitration which they may have contemplated would be decided by a court") (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)); *compare NY (Verizon NY/AT&T) Arbitration Order* at 10.

The Act compels parties to enter into contractual relationships and to arbitrate the terms of those relationships before state commissions, if they cannot voluntarily agree to them. The Act does not, however, require parties to include in their interconnection agreements arbitration

clauses to deal with disputes that arise under their contracts. Thus, to the extent that WorldCom has proposed ADR provisions to which Verizon VA has not agreed, this Commission cannot require the inclusion of such provisions in the Parties' agreement.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, General Terms and Conditions, § 14 and related definitions. Alternatively, Verizon VA proposed to WorldCom the language to which Verizon VA and AT&T have agreed. *See* Verizon VA proposed AT&T contract § 28.11.3.

ISSUE IV-106: Indemnification

WorldCom: Should the Interconnection Agreement contain a provision under which each Party agrees to indemnify the other Party for certain specified liability arising from the Interconnection Agreement that is legally caused by the indemnifying Party? Should the provision also contain various procedures, including limiting conditions, regarding how indemnification is obtained, including notice, authority to defend, authority to settle, obligation to assert defenses in applicable Tariffs, and an obligation on the indemnified Party to offer reasonable cooperation and assistance?

A. OVERVIEW

This is another issue that Verizon VA and AT&T have settled. Verizon VA has offered WorldCom two means of settling this issue. If WorldCom wishes to use its proposed § 19, Verizon VA will agree, if subsection 19.1(b) is reinstated and § 19.2 is deleted. As an alternative, Verizon VA will adopt, in its interconnection agreement with WorldCom, the indemnification provisions agreed to by Verizon VA and AT&T.

B. DISCUSSION

Verizon VA cannot agree to include WorldCom's proposed Part A, § 19.1, unless subsection 19.1(b) is reinstated. That clause was in the Parties' 1997 interconnection agreement, but has been deleted by WorldCom. Subsection (b) provides an important incentive for each Party to place in its tariffs and customer contracts limitations on the liability of its suppliers (*e.g.*, Verizon VA as a supplier to WorldCom) on account of the supplier's provision of services. This is a standard clause, which is widely used among utilities.

WorldCom's newly-proposed § 19.2 was not a part of the Parties' 1997 interconnection agreement and is wholly unacceptable. It provides, in essence, the opposite of what subsection 19.1(b) provides. Effectively, § 19.2 would make Verizon VA a guarantor, by requiring Verizon VA to indemnify WorldCom for any claims that WorldCom's customers make against WorldCom on account of Verizon VA's provision of services to WorldCom.

This means that any time Verizon VA does not provide perfect performance (*e.g.*, Verizon VA does not perform a single "hot cut" at the specified time), Verizon VA must indemnify WorldCom if WorldCom's customer brings a claim against WorldCom. That would be ridiculous. Under WorldCom's approach, even if Verizon VA performs 999 out of 1000 hot cuts on time, Verizon VA must still indemnify WorldCom for the single hot cut it did not perform on time -- even if Verizon VA, for sake of argument, were performing installations on time for its own new end user customers only 95% of the time. Rather than this inequitable result, each Party's liability under the interconnection agreement should generally be limited to the value of the services provided to the other Party that are the subject of the claim.

The unreasonableness of WorldCom's proposal is demonstrated by the fact that other carriers do not even ask Verizon VA for such a commercially unreasonable provision. WorldCom's bald assertion that its proposed indemnification provisions are "not overly burdensome" is simply not true. If WorldCom were to have its way, any time one of its end user customers had a problem, WorldCom could look to Verizon VA for 100% indemnification.

WorldCom tries to paint its proposed § 19.2 as creating reciprocal obligations. In reality, Verizon VA will be providing virtually all of the services. As such, Verizon VA will be the only Party providing indemnification. As WorldCom is well aware, state public service commissions throughout the country have considered the issue of appropriate devices by which to encourage outstanding performance from RBOCs and have, in some cases, crafted performance assurance plans to provide such incentives. These sorts of limited plans are the means by which certain state commissions have determined that RBOCs will have to provide financial remedies to CLECs different than those the RBOCs provide to their own end user customers. Put another way, WorldCom should not be able to obtain superior (much less perfect) service from Verizon

VA. Rather, WorldCom should receive service in parity with that which Verizon VA provides to its own end user customers.

Under Verizon VA's retail tariffs, Verizon's liability to its own end user customers for less than perfect service is generally limited to the amount of the charge for which Verizon VA billed. The same should be true for WorldCom as a customer of Verizon VA. It is not entitled to receive superior treatment as compared to Verizon's own end user customers.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, General Terms and Conditions, § 24, and related definitions; *see also* Agreement proposed to AT&T, §§ 24.0 - 24.6, and related definitions.

ISSUE V-11: Indemnification for Directory Listings

WorldCom: Whether WorldCom should be required to indemnify Verizon for errors in or omissions of listings information caused by Verizon's gross negligence or willful misconduct?

A. OVERVIEW

Initially, this was an AT&T issue in which WorldCom joined. Once again, Verizon VA and AT&T have settled this issue, while WorldCom refuses to settle on the basis of the same language.

This issue boils down to Verizon VA's reasonable demand that WorldCom indemnify it in cases where Verizon VA prints directory listing information regarding a WorldCom customer in precisely the manner in which WorldCom provided the information to Verizon VA, and WorldCom's customer brings a claim against Verizon VA. In other words, a situation in which Verizon VA has made no mistake.

B. DISCUSSION

Verizon VA's position on this issue is simple and unassailable. If WorldCom provides directory listing information regarding a WorldCom customer to Verizon VA, and Verizon VA publishes that listing information in precisely the manner presented to it by WorldCom, then WorldCom should assume any responsibility for a claim brought against Verizon VA concerning the listing information. In such a situation Verizon VA has made no mistake and has no direct relationship with the WorldCom customer.

Verizon VA requests that this Commission incorporate into the Verizon VA/WorldCom agreement the same language that is has agreed to with AT&T.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, General Terms and Conditions, § 4.7, and related definitions.

ISSUE IV-110: Migration of Service

WorldCom: Should the Interconnection Agreement contain a provision that prohibits a providing Party from requiring the purchasing Party to produce a letter of authorization, disconnect order, or other writing, from the purchasing Party's subscriber as a pre-condition to processing an Order from the purchasing Party?

A. OVERVIEW

This is another issue that need not be addressed in the interconnection agreement. Applicable law sets forth the methods by which Verizon VA may seek to verify a preferred carrier change order. WorldCom, apparently dissatisfied with applicable law, seeks to reshape it by contract.

B. DISCUSSION

47 C.F.R. § 64.1120(c) states:

> No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures:
>
> (1) . . . the subscriber's written authorization. . .; or
>
> (2) . . . the subscriber's electronic authorization. . .; or
>
> (3) An appropriately qualified independent third party has obtained the subscriber's oral authorization . . . .

WorldCom's proposed language would prohibit Verizon VA from ever requesting that WorldCom produce some form of written customer authorization prior to processing a carrier change order. WorldCom proposed contract Part A, § 22.1. This provision not only re-writes the express statutory provision, it also ignores Verizon VA's proposal.

As quoted above, the Federal Regulations permit verification of a carrier change order in any one of three ways. Verizon VA's proposed language merely states that the Parties will abide by applicable law when processing such change orders. Verizon proposed WorldCom contract § XX.XX (*see* Second Revised JDPL for GTC Issues at p. 39). It remains possible, however,

that a state in which Verizon does business may require written verification for carrier change requests. Alternatively, if faced with a serious slamming concern, Verizon VA might wish to request written authorizations. In either case, WorldCom's proposed language would become a barrier to those legitimate requests.

Rather than attempt, by contract, to rewrite applicable law, the Commission should adopt Verizon VA's proposed language.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, § XX.XX (quoted on p. 39 of the Second Revised JDPL for GTC Issues).

ISSUE IV-113: Negotiations Prompted by Change of Law

WorldCom: Should the Interconnection Agreement contain a provision obligating the Parties to negotiate promptly and in good faith to amend the Interconnection Agreement in the event that subsequent changes in the law render any provision of the Interconnection Agreement unlawful, or materially alter the obligation(s) to provide services, or the services themselves, embodied in the Interconnection Agreement?

A. OVERVIEW

This issue involves the Parties' obligations to negotiate in the event a change of law materially affects the Parties' obligations under the interconnection agreement. The remaining dispute is over Verizon VA's demand that it retain the right to cease providing, upon adequate notice, a service or benefit that it is no longer required to provide under applicable law.

B. DISCUSSION

The Parties have agreed that they should meet and negotiate in good faith over any change of law that materially affects the interconnection agreement. Doing so, however, when a change of law results in the introduction of a new obligation to provide a service is fundamentally different than doing so when the law changes such that Verizon VA is no longer required to provide a particular benefit or service. In the latter case, Verizon VA will comply with the change of law, but it should not be required, as WorldCom has insisted, to "negotiate" with the CLEC over whether and how Verizon VA will be able to cease providing the affected service.

Verizon VA recognizes that it should not necessarily be able immediately to cease providing the affected service. Instead, if the new law does not state the date on which the obligation to provide the service ends, Verizon VA would provide a 45 day implementation schedule beginning on the day Verizon VA notifies WorldCom that there has been a change of law that does not require Verizon VA to provide a particular UNE or other benefit. During this

45 day period, the Parties will negotiate and, presumably, reach agreement as to how the change of law will affect the implementation of the interconnection agreement going forward. In addition, upon receipt of such notice, WorldCom would be free to petition the Commission or the VA Commission with respect to Verizon VA's proposed discontinuance of provision of the UNE or other benefit.

Verizon VA urges the Commission to adopt the commercially reasonable language proposed by Verizon VA.[4] If such language is not adopted, Verizon VA would be left in a position where it cannot obtain the benefits accorded to it by changes in applicable law. Thus, WorldCom, and CLECs adopting its contract, would be able to foil changes of law by insisting that Verizon VA "negotiate" for months on end before taking advantage of the change in law. This wholly unfair result should be rejected.

C. VERIZON VA'S CONTRACT PROPOSALS

See Verizon VA proposed WorldCom contract, General Terms and Conditions, § 4, and related definitions.

[4] During the hearing, the Staff asked that Verizon VA address in its brief change of law provisions used in other Verizon interconnection agreements. In this very proceeding, AT&T has agreed to language that allows Verizon VA to cease the provision of a UNE or service when a change of law eliminates Verizon VA's obligation to do so. *See* Verizon VA/AT&T contract § 27.6. Verizon VA will supplement this response in its reply brief.

ISSUE IV-120: Cumulative Remedies
ISSUE IV-121: Performance Metrics

WorldCom: Issue IV-120 - Should the Interconnection Agreement contain a provision governing available remedies stating that the remedies specified in the Interconnection Agreement are cumulative and are not intended to be exclusive of other remedies available to the injured Party at law or equity? Should the provision also state the Parties' agreement that the self-executing remedies for performance standards failures are not inconsistent with any other available remedy and are intended, as a financial incentive to meet performance standards, to stand separate from other available remedies?

Issue IV-121 - Should the Interconnection Agreement contain a provision (1) requiring Verizon to provide services and perform under this Agreement in accordance with any performance standards, metrics, and self-executing remedies (a) set forth in the Agreement and (b) established by the FCC, the Commission, and any governmental body of competent jurisdiction; and (2) incorporating those standards, metrics and remedies by reference into the Interconnection Agreement?

A. OVERVIEW

These two issues will be addressed in the performance metrics portion of the case.